

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P.No.5863 of 2017

ORDER:

This Civil Revision Petition is filed by the petitioner/plaintiff aggrieved by the order dated 21.08.2017 in I.A.No.766 of 2016 in O.S.No.31 of 2014 passed by the Junior Civil Judge, Warangal, allowing the petition filed by the defendant under Section 5 of Limitation Act to condone the delay of 940 days in filing the petition to set aside the *ex parte* decree dated 14.03.2014.

2a) The petitioner/plaintiff filed the suit for perpetual injunction in which the respondent/defendant refused to receive the summons and therefore he was set *ex parte* on 28.02.2014. Thereafter the trial Court recorded the evidence of plaintiff/DHR and passed the judgment on 14.03.2014. Subsequently, the DHR filed E.P.No.359 of 2016 in which notice was served on the wife of the defendant/JDR and E.P was posted to 01.09.2016, but the defendant was not present on that date. Apart from the same, when the Court bailiff intended to execute the warrant, the defendant obstructed and attacked him. Therefore, police aid was given by the Court.

b) While the matter stood thus, the defendant filed I.A.No.766 of 2016 seeking condonation of delay of 940 in filing the petition to set aside the *ex parte* decree dated 14.03.2014.

c) The trial Court observed that JDR received the notice but did not make any attempt to appear before the Court till execution of warrant. Moreover, the defendant being a public servant without complying the

Court order dragged on the matter on one pretext or other. However, the trial Court ultimately allowed the said petition on payment of costs of Rs.2,000/- by the defendant to the plaintiff on or before 01.09.2017.

Hence the instant CRP.

3) Heard arguments of Sri Venkateshwar Varanasi, learned counsel for petitioner/plaintiff and Sri B.Ranganatha Rao, learned counsel for respondent/defendant.

4) The point for determination is:

“Whether the respondent/defendant could show sufficient cause to condone the delay of 940 days and if not, whether the impugned order of the trial Court is factually and legally sustainable?”

5) **POINT**: The record shows petitioner/plaintiff filed O.S.No.31 of 2014 against respondent/defendant seeking perpetual injunction in respect of Ac.0.17 gts. of land in Sy.No.376 which she claimed to have purchased under a registered sale deed dated 06.09.2013 from the second wife of the father of respondent/defendant. Be that it may, when suit summons were served on the respondent/defendant on 28.01.2014, he refused to receive the summons and when the process server tried to fix on the door, he resisted. Thus it is manifest that the respondent/defendant had knowledge about the pendency of the suit. Thereafter, the trial Court set him *ex parte* and petitioner/plaintiff led evidence and trial Court decreed the suit—O.S.No.31 of 2014 in favour of plaintiff on 14.03.2014. Thereafter, the plaintiff filed E.P.No.359 of 2016 on

18.06.2016. Notice was ordered to the respondent/defendant/JDR and the same was received by his wife.

6) The submission on behalf of respondent/defendant was that he remained *ex parte* in E.P.No.359 of 2016 under compelling circumstances i.e. on the date of hearing i.e. on 31.08.2016 the bus belonging to RTC in which he was working as a Driver met with an accident at Jangaon and thereby he was held up till the next day to effect repairs to the bus and thereafter he returned to the Warangal—I Depot. The plaintiff approached him for amicable settlement on one hand and obtained arrest warrant in the E.P. on the other. He obtained the copies of EP and came to know that he was set *ex parte*. Therefore, he filed the petition to set aside the *ex parte* decree and in the meanwhile the delay of 940 days was occurred.

7) On a close scrutiny of averments in the affidavit filed by the respondent/defendant in I.A.No.766 of 2016, no reason, muchless sufficient reason was shown therein as to why he rejected the suit summons and allowed the suit to be decreed *ex parte*. He not only rejected the summons but also obstructed the process server from attaching the summons to his homestead. His attitude is disdainful towards the Court summons. He ought to have received the summons and presented his case if he had any objection against the suit filed by the plaintiff. Refusing to receive summons would not only leave the Court with no option but setting him *ex parte* and decide the suit. So, the undisputed facts in this case would establish that absolutely there is no reason muchless sufficient reason for the respondent/defendant firstly, to

remain *ex parte* and secondly, not to file petition to set aside the *ex parte* decree in time. Whatever explanation now he offered an attempt to show a reason for his remaining *ex parte* in the execution proceedings. Such reason even if admitted for arguments sake to be true, still will not cover the entire period of 940 days. So, the initial conduct of the respondent/defendant in refusing to receive the summons was contumacious and the subsequent explanation for remaining *ex parte* in the execution proceedings is quite unbelievable and unacceptable. The respondent/defendant did not produce any iota of evidence to show that his bus met with an accident on 31.08.2016. So, on a conspectus of entire facts, it must be said that there is no sufficient cause to condone huge delay of 940 days to set aside the decree in O.S.No.31 of 2014. It is true, generally the Courts shall not allow the matter to be decided *ex parte* but permit the parties to put-forth their respective contentions and decide the matter thereafter. However, it is a classic case where the defendant himself allowed the matter to be decided *ex parte*. When the party slumbers over his own rights Court cannot show unwarranted sympathy. The order of the trial Court is quite erroneous in this regard.

This point is answered accordingly.

8) In the result, this C.R.P. is allowed and the order passed by the trial Court in I.A.No.766 of 2016 is set aside. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 12.06.2018
Murthy